

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Breeanne Buckley Peni, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

DAILY HARVEST, INC. and SECOND BITE
FOODS, INC. d/b/a “STONE GATE FOODS”,

Defendants.

Civil Action No.
22-cv-05443
Honorable Denise Cote

**PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS
COUNSEL, REIMBURSEMENT OF NOTICE EXPENSES, AND APPROVAL OF
MANNER OF DISTRIBUTION OF NET SETTLEMENT FUND**

PLEASE TAKE NOTICE THAT, upon the Joint Declaration of William D. Marler, James R. Peluso, and Jeffrey A. Bowersox, sworn to on October 2 , 2024, and the accompanying exhibits and memorandum of law, and upon all prior proceedings, pleadings, and filings in the above-captioned action, Plaintiff Breeanne Buckley Peni will move this Court at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, before the Honorable Denise Cote, United States District Judge, for an Order under Federal Rule of Civil Procedure 23 to:

1. Grant final approval of the proposed Class Action Settlement in the amount of Twenty-Two Million, Nine Hundred and Ninety-Nine Thousand Dollars (\$22,999,000.00) with the Settling Defendants Daily Harvest, Inc., and Second Bite Foods, Inc., on behalf of the Settlement Class Members according to the terms of the parties' Settlement Agreement;

2. Have the Second Amended Class Action Complaint serve as the operative complaint for the settlement of all litigation and claims against the Settling Defendants;
3. Certify, for settlement purposes only, the Rule 23(b)(3) Class which is defined as “All persons in the United States (including its territories) who purchased, received, or consumed French Lentil + Leek Crumbles (“the Product” or “the Crumbles”) and directly suffered personal injuries caused by the consumption of the Crumbles, and all persons in the United States (including its territories) who suffered consequential monetary damages arising from or related to another person’s personal injuries arising from consumption of the Crumbles.”
4. Approve the sufficiency of the Notice provided to the Class;
5. Approve the Allocation Matrix and manner of distribution of the Net Settlement Funds;
6. Appoint Edgar Gentle of Gentle Turner & Benson, LLC as the Settlement Administrator for purposes of administering the Settlement Program;
7. Appoint Plaintiff Breeanne Buckley Peni as class representative;
8. Appoint Plaintiff’s Counsel as attorneys for the class (“Class Counsel”);
9. Approve the reimbursement of \$33,333.00 to Class Counsel for expenses.
10. Dismiss this action with prejudice on the merits against the Settling Defendants.
11. Enjoin any released claims by the Settlement Class.
12. Dismiss any contribution and indemnity claims arising from the released claims.
13. Enter such further relief requested in the proposed Final Judgment attached to the accompanying Joint Declaration of William D. Marler, James R. Peluso, and

Jeffrey A. Bowersox in support of the motion.

PLEASE TAKE FURTHER NOTICE that a Final Approval Hearing is scheduled for October 15, 2024.

Dated: September 30, 2024

Respectfully submitted,

/s/ William D. Marler

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